

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

JOSE ARCENIO CUELLAR,

Plaintiff,

v.

SALINAS CALIF. SUPERIOR COURT;
et al.,

Defendants.

No. C 13-4639 LB

ORDER OF DISMISSAL

[Re: ECF Nos. 1 and 6]

Jose Arcenio Cuellar, formerly an inmate in California and now residing in El Salvador, filed this *pro se* civil rights action under 42 U.S.C. § 1983. The court reviewed his complaint under 28 U.S.C. § 1915 and dismissed it with leave to amend. Plaintiff did not file an amended complaint. He did, however, file a document entitled "Exhibits" in a companion action. *See* ECF No. 7 in *Cuellar v. Salinas Calif. Superior Court*, No. C 13-5441 LB. Out of an abundance of caution, the court has filed a copy of the document entitled "Exhibits" in this action and will construe it to be an amended complaint in this action because it had attached to it a copy of the order of dismissal with leave to amend for this action.

The original complaint named seven judges as defendants and alleged that they "abuse[d]" plaintiff and did not tell the truth. *See* ECF No. 1 at 2. The court dismissed the complaint with

1 leave to amend. The court explained the doctrine of absolute judicial immunity, and noted that
2 plaintiff's claims "appear to be barred by the doctrine of absolute judicial immunity but the court is
3 unable to understand enough of the allegations to determine with certainty that all the claims are
4 barred." ECF No. 5 at 3. The court granted leave to amend so that plaintiff could "file an amended
5 complaint in which he describes specifically what each defendant did or failed to do that caused a
6 violation of plaintiff's constitutional rights. In his amended complaint, plaintiff must be careful to
7 allege facts showing the basis for liability for each defendant for each of his legal claims." *Id.* The
8 court also stated that plaintiff's request to have the defendant judges impeached sought relief the
9 court could not grant, and instructed plaintiff that his "amended complaint must request relief this
10 court is able to grant." *Id.* at 4.

11 Plaintiff's "Exhibits" document, which the court construes to be an amended complaint,
12 complains of judicial conduct. The amended complaint alleges that defendant Judge Duffy presided
13 in a municipal court hearing on his criminal case where "everything was incorrect," defendant Judge
14 Maldonado presided over a superior court hearing where "they used the same offenses against
15 [plaintiff]," defendant Judge Phillips "used incorrect evidence" in superior court, defendant Judge
16 Praire presided over a hearing in which plaintiff's public defender told him to seek a bench trial
17 rather than a jury trial, defendant Judge Hinrich presided over a hearing in which the district attorney
18 used four rape charges against plaintiff in a "fatally bad" hearing, and defendant U.S. Magistrate
19 Judge Beck told him in 2001 in the U.S. District Court in Fresno "not to say a word about the
20 crimes." ECF No. 6 at 2.

21 A state judge is absolutely immune from civil liability for damages for acts performed in his
22 judicial capacity. *See Pierson v. Ray*, 386 U.S. 547, 553-55 (1967) (applying judicial immunity to
23 actions under 42 U.S.C. § 1983). "[J]udicial immunity is an immunity from suit, not just from
24 ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). A federal judge's
25 absolute immunity is even broader than that available for state judges, as it extends to actions for
26 declaratory, injunctive and other equitable relief as well as damages. *See Mullis v. U.S. Bankruptcy*
27 *Court*, 828 F.2d 1385, 1394 (9th Cir. 1987). Whether an act by a judge is a judicial one relates to
28 (1) the nature and function of the act and not the act itself, i.e., whether it is a function normally

1 performed by a judge, and to (2) the expectations of the parties, i.e., whether they dealt with the
2 judge in his judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978); *see also Duvall v.*
3 *County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (other factors to consider in determining
4 whether a particular act is judicial include whether the events occurred in the judge's chambers,
5 whether the controversy centered around a case then pending before the judge, and whether the
6 events arose directly and immediately out of a confrontation with the judge in his or her official
7 capacity). Each of the defendants has absolute judicial immunity for damages claims for his or her
8 alleged misdeeds because the alleged misdeeds were acts performed in his or her judicial capacity.
9 Although the state judges' judicial immunity only extends to suits for damages, plaintiff does not
10 demand any equitable or declaratory relief against them. He does request that they be impeached,
11 but the court has already told him that the court does not have the power to impeach federal or state
12 judges. *See generally* U.S. Const. art. I, § 2 ("The House of Representatives . . . shall have the sole
13 Power of Impeachment"); *id.* at § 4 ("The Senate shall have the sole Power to try all
14 Impeachments"); Cal. Const. art. II, §§ 13-19 (procedures for California voters to recall elective
15 officials).

16 This action is dismissed because the defendants have absolute judicial immunity from the claims
17 alleged against them. Further leave to amend will not be granted because it would be futile: the
18 court already explained the deficiencies in the complaint, and the amended complaint failed to cure
19 those deficiencies. The clerk shall close the file.

20 **IT IS SO ORDERED.**

21 Dated: March 4, 2014



22 LAUREL BEELER
23 United States Magistrate Judge
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